MAE SDN BHD & ORS

v.

PERWIRA HABIB BANK MALAYSIA BHD, KUALA TERENGGANU

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL KADIR SULAIMAN J
[CIVIL SUIT NO: 23-83-86]
23 JUNE 1999

CIVIL PROCEDURE: *Pleadings - Amendment - Application to re-amend amended statement of claim - Amended statement of claim filed outside time - Whether invalid - Whether application to re-amend without basis - Rules of the High Court 1980, O. 20 r. 9*

This was an appeal against the decision of the learned Senior Assistant Registrar ('SAR') granting leave to the respondents to re-amend their amended statement of claim, on the grounds that the said amended statement of claim was invalid and there was therefore no basis upon which the application for re-amendment could be based.

The facts were that on 3 April 1994 the court granted the respondents leave to amend their original statement of claim. The order did not specify the period within which the pleading were to be amended, and that being so, the 14-day period under O. 20 r. 9 Rules of the High Court 1980 ('RHC') applied with the result that the amendment must be filed not later than 17 April 1994. It was put in evidence that by letter dated 7 April 1994, the respondents sent the amended pleadings to the court together with the necessary filing fee. However, the documents, although received by the Registrar on 13 April 1994, were formally filed only on 18 April 1994. The appellants contended that under the circumstances it was wrong of the learned SAR to have granted leave to re-amend the amended pleading, there being no effective amended pleading in the first place. The respondents retorted that as of 13 April 1994 they had carried out the order of court granting leave to amend, which was well within the 14-day period, and O. 20 r. 9 RHC was therefore complied with. Before the learned judge-in-chambers, a question arose as to whether, in the context of O. 20 r. 9 RHC, the original statement of claim was amended by the respondents on 13 April 1994 or 18 April 1994.

Held:

[1] Within the context of O. 20 r. 9 RHC, the evidence to show that the respondents had carried out the order of the court of 3 April 1994, *ie*, to amend the pleading within 14 days, is not the date a receipient received the amended pleading from the respondents or their solicitors. The receipient is but the agent for the respondents, and it makes no difference if the receipient happens to be the court.

[1a] As of 13 April 1994, when the documents and the Postal Order for RM20 reached the office of the Registrar, they remained the property of the respondents. This is so because until the documents are filed the sum paid does not yet become officially accounted for. For that reason, the respondents cannot as yet at that stage be considered to have complied with the requirement of O. 20 r. 9 of the RHC.

[2] The evidence necessary to establish that the respondents has done something which is required to be done in their business with the court is the date of the filing of the relevant documents at the court's registry. This according to the evidence was done on 18 April 1994. Therefore, for the purpose of O. 20 r. 9 RHC, the respondents must be taken to have amended their pleading only on 18 April 1994, which is clearly outside the requirement of the said order which renders the amendment ineffective.

[3] Consequently, the portion underlined in red in the application before the SAR must be ignored. Having done that the portion underlined in green in relation to the original pleading becomes unintelligible. The learned SAR ought not to have granted leave for re-amendment.

[Appeal allowed; Order of SAR set aside.]

Legislation referred to:
Rules of the High Court 1980, O. 20 r. 9

For the appellants - Mokhtar Ngah; M/s Mokhtar Ngah & Co
For the respondents - Madam FS Lai; M/s Shook Lin & Bok

Reported by WA Sharif

JUDGMENT

Abdul Kadir Sulaiman J:

The appellants, who are the defendants in the main suit brought by the respondents as plaintiffs, appeal to the judge in chambers against the decision of the learned senior assistant registrar (the SAR) of 14 March 1999 granting leave to the respondents to re-amend their amended statement of claim. The main grievance of the appellants is that the leave ought not to have been granted as the re-amendment relates to the amended statement of claim which to the appellants was of no effect on the ground of non-compliance with the provisions of O. 20 r. 9 of the Rules of the High Court 1980 (the 1980 Rules) it being amended beyond the period allowed by the rule without any leave being granted for them to do so. Rule 9 thereof states:

> 9. Where the court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the court to extend the period.

Leave for the respondents to amend the original statement of claim was granted by court on 3 April 1994 and the order is in encl. (24A). The order of the court did not specify the period within which they are to amend the pleading. Hence, the 14 day rule would apply under O. 20 r. 9 of the 1980 Rules. In this case, the last date for the respondents to do so was 17 April 1994. However, in this, the respondents filed the amendment only on 18 April 1994 as evidenced by the standard franking impression appearing on the amended pleading, a delay of one day. So, it is the contention of the appellants that the order of the court granting leave to the respondents has lapsed. As such, there was no valid amendment of the original pleading upon which this application for re-amendment is based. So, the learned SAR has erred in so granting this application of the respondents. Hence this appeal to the judge-in-chambers.

The first amendment sought by the respondents, which was granted by the order of court of 3 April 1994, was in respect of those underlined in red. Those matters were indicated as such in this re-amendment application. The re-amendment parts were marked in green. The appellants contend that if the amendment which was in red is of no effect for non-compliance with O. 20 r. 9 for the reason given earlier, they ought to be expunged and if this is done, the proposed re-amendment underlined in green read with the original pleading would not make any sense to the pleading of the respondents as a whole. In the instant case, the re-amendment allowed by the learned SAR includes the offensive part in red. Hence, this application of the respondents for re-amendment ought not to have been granted by the learned SAR.

For the respondents, it was contended that the learned SAR was right in the exercise of her discretion in granting leave over their application for the re-amendment of the pleading as the first amendment was in order and has effect. The first amendment was done in time in compliance with the requirement of O. 20 r. 9 of the 1980 Rules. The argument is supported by the fact that after obtaining the court order of 3 April 1994 in respect of the first amendment, by a letter dated 7 April 1994 addressed to the assistant registrar of the High Court, the solicitors for the respondents sent two copies each of the amended pleadings with a Postal Order for RM20 being filing fees. That letter with the enclosures were received by the assistant registrar on 13 April 1994. However, the documents were formally filed on behalf of the respondents only on 18 April 1994 as evidenced by the standard franking impression appearing on the documents. So, as of 13 April 1994, the order of the court was carried out by the respondents which is well within the 14 day period. As to the documents being formally filed only on 18 April 1994, it was done outside the control of the respondents. The respondents had done all that is necessary to be done as required by O. 20 r. 9 of the 1980 Rules.

This fact concerning the receipt by the assistant registrar of the documents on 13 April 1994 and the subsequent filing of the documents on 18 April 1994 not being in dispute, the issue before me now is when did the respondents amend their pleading in the context of O. 20 r. 9 of the 1980 Rules. Was it done on 13 April 1994 or 18 April 1994? If it was done on 13 April 1994 the first amendment of the pleading would have effect and this appeal of the appellants must necessarily fail. However, if it was done on 18 April 1994 the respondents were clearly out of time rendering the amendment ineffective. If that be so, the re-amendment becomes unintelligible whereby the learned SAR ought not to have allowed the application of the respondents for leave to "re-amend" their pleading.

In my oral decision in this appeal made on 28 April 1999, I ruled in favour of the appellants for the following reasons. Within the context of O. 20 r. 9 of the 1980 Rules, what is the evidence to show that the respondents in this case has carried out the requirement of the order of the court of 3 April 1994, ie, to amend their pleading, within 14 days after the order made so as to make the first amendment of the pleading to be of effect? It cannot be the day the plaintiff or their solicitors prepared the said amendment for no one knows when that act was done. Neither can it be the date a recipient received the amended pleading from the respondents or their solicitors if the respondents or their solicitors chose to send one to him for him to do a further act on their behalf. Here the recipient is but the agent for the respondents or their solicitors. It makes no difference if the recipient happens to be the court or its official. As of 13 April 1994 when the documents and the Postal Order

for RM20 reached the office of the registrar they remained the property of the respondents which the respondents or the solicitors, for reason best known to them, could at any time recall for the documents and the Postal Order, and conversely, the registrar could return term back to the sender. This is so because until the documents are filed the sum paid does not as yet become officially accounted for. For that reason, the respondents cannot as yet at that stage be considered to have complied with the requirement of O. 20 r. 9 to amend their original pleading. Therefore, it is my view which I hold, that the evidence necessary to establish that the respondents has done something which is required to be done in their business with the court is the date of the filing of the relevant documents at the court's registry, which in this case id the respondents' amended pleadings. This according to the evidence was done only on 18 April 1994. A document once properly filed, becomes public notice for all purposes. In the instant case, it was no doubt that for convenience and expediency the respondents instead of coming personally to file the documents could do so through sending them to the court. But if they do so, they run the risk of the documents not being filed in due time on their behalf, as happened in this case. For that delay in the filing, the appellants cannot be faulted or prejudiced as they have every right to object if matters are governed by time but was not done within the time stipulated.

The determining event in this case is the date of filing of the purported amendment of the original pleading. But as happened in this case, the filing was only done on 18 April 1994 although the documents reached the assistant registrar on 13 April 1994. Therefore, for the purpose of O. 20 r. 9, the respondents must be taken to have amendment their pleading only on 18 April 1994, which is clearly outside the requirement of the said Order which renders the amendment ineffective. Consequently, the portion underlined in red in the application before the SAR must be ignored. Having done that the portion underlined in green in relation to the original pleading becomes unintelligible. Under the circumstances, the learned SAR ought not to have granted leave for the re-amendment. Such is the case, I have no alternative but to allow the appeal of the appellants with costs and to set aside the order of the learned SAR.

The continued hearing of the main suit which was adjourned for the purpose of this appeal should proceed immediately to its completion.